

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHAWN CHARISE GAINES

Plaintiff,

v.

MAGGIE MILLER-STOUT,

Defendant.

No. C04-5829RBL

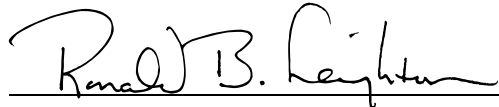
ORDER DENYING
PLAINTIFF'S MOTION
FOR A CERTIFICATE OF
APPEAL

This matter is before the court on the Plaintiff's Motion for a Certificate of Appeal. [Dkt. #26].

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120 S.Ct. at 1604.

1 Here, Gaines has failed to establish that reasonable jurists would find that the State court's rejection
2 of Gaines' request for an evidentiary hearing on this record was debatable or wrong. For the reasons
3 articulated in the Report and Recommendation, Gaines' Motion for a Certificate of Appeal is Denied.
4

5 DATED this 7th day of October, 2005.
6

7
8 

9 RONALD B. LEIGHTON
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28